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SUPERIOR COURT

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CIVIL DIVISION

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KENNETH C. MOCKENIE, J.S.C.

OCT 27 2005

JUDGE'S CHAMBER  
MORRIS COUNTY COURTHOUSE

ENTERED ON ACMS

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MORRIS COUNTY

Docket No.: MRSC-190-05

PETER C. HARVEY, Attorney General of  
the State of New Jersey, and KIMBERLY S.  
RICKETTS, Director of the New Jersey  
Division of Consumer Affairs,

Plaintiffs,

v.

TIMOTHY DENEHAN individually and  
d/b/a CODE PLUS GENERAL  
CONTRACTING and A+ PLUS  
GENERAL CONTRACTING a/k/a  
A+ PLUS CONTRACTORS,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Peter C. Harvey, Attorney General of the State of New Jersey, with offices located at 124 Halsey Street, Fifth Floor, Newark New Jersey, and Kimberly S. Ricketts, Director of the New Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of Complaint state:

## **PARTIES AND JURISDICTION**

1. The Attorney General of the State of New Jersey ("Attorney General") is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. The Director of the New Jersey Division of Consumer Affairs ("Director") is charged with the responsibility of administering on behalf of the Attorney General the CFA and the regulations promulgated thereunder.

2. By this action, the Attorney General and the Director (collectively referred to as "Plaintiffs") seek injunctive and other relief for violation of the CFA and the regulations promulgated thereunder. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8- 8, 56:8-11, 56:8-13 and 56:8-19. Venue is proper in Morris County, pursuant to R. 4:3-2, because it is a county in which the Defendants have conducted business and/or in which the cause of action arose.

3. Upon information and belief, Timothy Denehan ("Denehan") is the owner, manager, member, agent and/or employee of Code Plus General Contracting and/or A+ Plus General Contracting a/k/a A+ Plus Contractors. Upon information and belief, Denehan's last known and/or current home address is 32 Eaglesmere Circle, East Stroudsburg, Pennsylvania. Upon information and belief, Denehan maintains a mailing address of 85 Lennox Avenue, Apartment 1, East Stroudsburg, Pennsylvania.

4. Upon information and belief, Code Plus General Contracting ("Code Plus") is not incorporated in the State or elsewhere. Upon information and belief, Code Plus maintained a mailing address of 470 Schooleys Mountain Road, Hackettstown, New Jersey 07840.

5. Upon information and belief, A+ Plus General Contracting a/k/a A+ Plus Contractors("A+ Plus") is not incorporated in the State or elsewhere. Upon information and belief, A+ Plus maintained a mailing address of 470 Schooleys Mountain Road, Hackettstown, New Jersey, 07840.

6. Denehan, Code Plus and A+ Plus are collectively referred to as "Defendants."

#### **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

7. Upon information and belief, since at least 1999, Denehan, Code Plus and/or A+ Plus have been engaged in the business of performing home improvements in the State and elsewhere including, but not limited to, roofing, construction of garages and additions and other renovations and repairs.

8. Upon information and belief, Denehan, Code Plus and/or A+ Plus have entered into home improvement contracts with consumers in the State to perform home improvement work including, but not limited to, roofing, construction of garages and additions and other renovations and repairs.

#### **COUNT I**

##### **VIOLATIONS OF THE CFA BY DEFENDANTS (UNCONSCIONABLE COMMERCIAL PRACTICES)**

9. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 8 above as if more fully set forth herein.

10. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such

concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

11. In the operation of their home improvement business, Defendants have engaged in unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

12. Defendants have engaged in unconscionable commercial practices including, but not limited to, the following:

- a. Failing to commence the work specified in home improvement contracts;
- b. Failing to complete the work specified in home improvement contracts;
- c. Failing to obtain the requisite permits before commencing home improvement work;
- d. Failing to provide consumers with timely written notice of a delay in the commencement of home improvement work;
- e. Damaging a consumer's personal belongings and/or property while performing home improvement work;
- f. Failing to return to consumers' homes to complete home improvement work;
- g. Accepting payment for home improvement work that Defendants never commenced;
- h. Accepting payment for home improvement work that Defendants never completed;
- i. Failing to provide consumers with refunds for home improvement work that Defendants never commenced and/or completed;
- j. Requesting and receiving additional money from a consumer to complete home improvement work and then failing to do so; and
- k. Failing to respond to consumers' inquiries in a timely manner or at all.

13. Each unconscionable commercial practice by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

## COUNT II

### **VIOLATIONS OF THE CFA BY DEFENDANTS (FALSE PROMISES, MISREPRESENTATIONS AND KNOWING OMISSIONS OF MATERIAL FACT)**

14. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 13 above as if more fully set forth herein.

15. In the operation of their home improvement business, Defendants have made false promises and/or misrepresentations including, but is not limited to, the following:

- a. Misrepresenting that all or a portion of a consumer's deposit would be returned if Defendants failed to commence home improvement work;
- b. Misrepresenting that Defendants were in the process of obtaining the requisite permits; and
- c. Misrepresenting that home improvement work would be completed if the consumer made an additional payment.

16. In the operation of their home improvement business, Defendants have engaged in knowing omissions of material fact including, but not limited to, the following:

- a. Failing to include in home improvement contracts the date or time period within which work is to commence;
- b. Failing to include in home improvement contracts the date or time period within which work will be completed; and
- c. Failing to include in home improvement contracts the consumer's signature.

17. Each false promise, misrepresentation and/or knowing omission of material fact by Defendants constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATIONS OF THE HOME IMPROVEMENT  
PRACTICES REGULATIONS BY DEFENDANTS

18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 17 above as if more fully set forth herein.

19. The Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller connected with the sale, advertisement or performance of home improvement contracts.

20. Defendants are "seller[s]" within the definition of N.J.A.C. 13:45A-16.1.

21. The contracts are "home improvement contract[s]" within the definition of N.J.A.C. 13:45A-16.1.

22. Specifically, the Home Improvement Regulations provide, in pertinent part:

- a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization by a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

....

7. Performance:

....

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or

- iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

[N.J.A.C. 13:45A-16.2(a)(7)(ii), (iii).]

23. Additionally, the Home Improvement Regulations require sellers to ensure that all applicable permits have been obtained prior to commencement of work, as follows:

10. Building Permits

- i. No seller contracting for the making of home improvements shall commence work until he is sure that all applicable state or local building and construction permits have been issued as required under state laws or local ordinances....

....

[N.J.A.C. 13:45A-16.2(a)(10)(i).]

24. The Home Improvement Regulations further include a writing requirement for contracts priced in excess of Two Hundred (\$200.00) Dollars, and provides in relevant part:

- 12. Home Improvement contract requirements - writing requirement: All home improvement contracts for a purchase price in excess of \$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes to the terms and conditions thereof, shall be signed by all parties thereto, and shall be clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

....

- iv. The dates or time period on or within which the work is to begin and be completed by the seller;

....

[N.J.A.C. 13:45A-16.2(a)(12)(iv).]

25. Defendants have violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to, the following:

- a. Failing to commence the work by the date or within the time period specified in the home improvement contract;
- b. Failing to provide a consumer with timely written notice of a delay in the commencement of home improvement work;
- c. Failing to obtain consumer's written consent to any changes in the commencement dates specified in the home improvement contract;
- d. Failing to include in home improvement contracts the dates or time periods on or within which the work is to commence;
- e. Failing to include in home improvement contracts the dates or time periods on or within which the work is to be completed;
- f. Commencing home improvement work before all requisite building and construction permits had been issued; and
- g. Failing to include in home improvement contracts the consumer's signature.

26. Defendants' conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

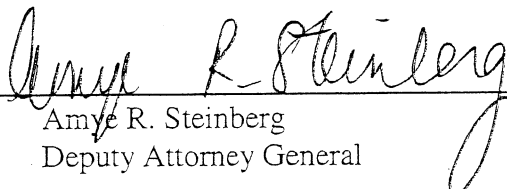
### **PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple violations of the CFA, N.J.S.A. 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Defendants and their owners, agents, employees and representatives and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq. and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;

- (c) Directing the assessment of restitution amounts against Defendants, jointly and severally, to restore any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of cost and fees, including attorneys' fees, against Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Amy R. Steinberg  
Deputy Attorney General

Dated: October 27, 2005  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter and controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State. I am aware of the following actions commenced by persons who submitted consumer complaints to the Plaintiffs: Thomas Lederman and Catherine Lederman v. Tim Denehan, Superior Court, Law Division-Hudson County, Docket No. L-000010-03; and Titus Johnson v. Timothy Denehan, Superior Court, Law Division-Essex County, Docket No. L-004274-04. I am aware that the Lederman action concerns consumer fraud allegations, but I have no direct information as to the allegations set forth in the Johnson action. I am also aware that the Defendants are parties to certain other private contract, real property and/or personal injury actions, but I have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY

By: Amye R. Steinberg  
Amye R. Steinberg  
Deputy Attorney General

Dated: October 27, 2005  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Amye R. Steinberg, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs in this matter.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY

By: Amye R. Steinberg  
Amye R. Steinberg  
Deputy Attorney General

Dated: October 27, 2005  
Newark, New Jersey